19 51 K File No. O. Entertainment / 51

Legal DEPARTMENT

A. BRANCH

Subject:— Opinions under the Bombay Entertainments Duty Act, 1923.

File No. O Entertainments/51

Std. Sectt. Slip 21 B

581-A

K

CONTENTS

Legal Department Vol. No. . O Entertainments /1951

S. NO.	Comp. No.	Subject	Pages.
		Opinions under the Bombay Entertainments Duty Act, 1923.	
	O. Entertainments/51		
1)	R. I. No. 9855 /17-5-51. O. No. 7951/ 19-5-51.	Question regarding recovery of entertainments duty under the Bombay Entertainments Duty Act, 1923, at flat rate both from diners and non-diners at the Restaurant.	1-6
	O.No. 9277/12-6-51	Question whether the amounts charged for the admission of ladies to the enclosures of the Race Courses at Bombay and Poona cannot be considered to be "Payment at a reduced rates" within the meaning of Section 2(e) of the Bombay Entertainments Duty Act, 1923, so that full entertainment duty can be charged in respect of such tickets under section 3 A of that Act. (Please see R.L.A's No.11194 dt. 14- 7- 51)	7-10
3	O.No.8422/29-5-51.	Re: Refund of the entertainment duty already recovered in respect of the Mayer's Relief Fund by granting exemption under section 6(3) of the Bombay Entertainments Duty Act, 1923. (Please also see R.L.A's No.9367 dt5-6-52)	11-12
4	R.I.No. 10297/24-5-51. O.No.11149/14-7-51.	Re: Power of the Municipalities to levy entertainment tax. Position in this respect of the merger of states where Bombay Entertainments Duty Act, 1923 has been made applicable.	13-18
5	R.I.No.1450/12-7-51. O.No.11194/14-7-51.	Question whether the Secy. R.D. view that (1) section 3 of the Bombay Entertainment to charge different rates to different classes(of persons) although they may sit in the same class (of accommodation)/; 2) Where "the complimentary" element in a ticket is referable to such a class of persons, as distingt from strictly speaking, be regarded as a complimentary ticket for the purpose of assessment of entertainments duty, is correct.	19-21

Duty Act 1923 permits the management

	R.I.No. 8426/27-4-51. O.No.11299/17-7-51.	Re: Prince of Wales Museum admission fee charged in respect of admission to - Entertainment tax chargable on the tickets unless an exemption in respect thereof is granted by Govt. Under Sec.6(3) of the Bombay Entertainments Duty Act, 1923. Question whether "Visiting a public Museum" is an entertainment within the meaning of the Bombay Entertainments Duty A ct, 1923. 23-26
7	R.I.No. 15016/19-7-51. O.No.13472/22-8-51.	Re: 'Kalakshetra' which always arranges musical performances, admission to which is restricted to the members thereof whoare charged the annual subscription and does not charge separate admission for the performances. Question whether the Kalakshetra is liable to pay entertainment duty under Sec.3 of the Bombay Entertainments Duty Act, 1923. (Please see R.L.S!s No.18640 dt. 21- 11- 51) 27-28
8	R.I.No. 16437/7-8-51. O.No.13518/ 23- 8-51.	Re: Power of Municipalities to levy Entertainment duty. Position in this respect after the merger of the States where the Bombay Entertainments Duty Act, 1923, has been made applicable (Please see R.L.S8s No.11149 dt. dt.14-7-51) 29-34
9	R.I.No. 22367/27-10-51. O.No.18533/20-11-51.	Re: Breach of the Provisions of the Bombay Entertainments Duty Act, 1923. Question whether the licence granted under the Bombay Police Act, 1951 and the Cinematograph Act, 1918 can be suspended for breaches of any other Acts. 35-38
10	R.I.No.22765/5-11-51. O.No.18640/21-11-51.	Re:Local Musical Clubs which arrange Musical or other entertaining performances to which members of the institution alone are admitted without charging any extra fee besides the monthly subscriptions, and which allows the members of the Club to bring with them one or two guests each on payment of admission charges of about Rs.2/-or so, though non-members are not admitted even on payment. Question whether entertainment duty can be charged on payment of admission charges by guests. (Please see R.L.S's No.13472 dt.22- 8- 51) 39-44

DYR.

11	O. Entertainments/52 R.I.No.25026/4-12-51. O.No.319/11-1-52.	Question whether the presumption that a performance licence is not required even if extra fees are charged to members by the Institution or if the members are allowed to bring guests on payment, on the ground that rule 38 only applies to a public performance to which the public are admitted on payment of money, is correct. 45-48
12	O.No.11478/11-7-52	Question whether when entertainment duty has been paid in respect of an entertainment but an application for refund has not been made to the Commissioner of Police or the Distt. Magistrate, as the case may be within 15 days from the date of the entertainment as required by sub-rule(2) of rule 19 of the rules made under Sec.7 of the Bombay Entertainments Duty Act, 1923, it would be possible for Govt. to direct the refund of the amount under any provision of the Act or the Rules. 49-50
13	R.I.No.9949/19-5-52. O.No.9367/5-6-52.	Question when once the entertainments duty is paid and the case does not fall under sub-sections (1) and (2) of section 6 of the Bombay Entertainments Duty Act, 1923, whether it would be competent for Govt. to refund the entertainments Duty under Sub-Sect (3) of Sec. 6. 51-54
14	R.I.No.10866/3165-52 O.No.13045/7-8-52.	Question regarding prosecution for contravention of rules 23 A of and 23 B of the rules formed under the Bombay Entertainments Duty Act, 1923. The Bombay Entertainments Duty Act, 1923. Sec. 7(2). 55-58
15.	R.I.No.794Confl/6-8-52 O No 892 confl / 8-9-52	Question regarding prosecution under Sec 131(ii) of the Bombay Police Sect. 1951 for violation of the rules formed by the D.M.Under Sec.33(1)(x) of the said Act and also for not paying the entertainment duty and thereby for contravention of Sec.4 of the Bombay Entertainments Duty Act, 1923. 59-62
16	O.No.12689/31-7-52	Re: Exemption from entertainment duty of 4 anna tickets Bombay Entertainments Duty Act, 1923. Sec. 6(3) 63-64

17 O.No. 19445/21-11-52

Re. The lectures of Shri. V.D.Sawarkar arranged by the Parshuram Prakashn Mandir for its members only on admission fee Rs. 0- 8- 0 per person. Question whether there lectures would be entertainment within the meaning of the Bombay Entertainments Duty Act, 1923, so that the duty can be laved on payment for admission to these lectures.
The Bombay Entertainments Duty Act, 1923.
Sec§.2(a)

Please see R.L.S's No.87 Conflt dt. 21-1-53.). 65-70

DYR.

In proposing that the hotels should issue to diners memo. for Rs. 11/5 or Rs. 10/4 according as the day of such dinner may be Saturday or any other day of the week, which charges would cover both the food and entertainment charges so that Government may then direct that these lump sum payments include Re. 1/- each for right to admission to entertainment in respect of which the entertainment duty at annas 5/- is recoverable, the Under Secretary, Revenue Department, appears to have in contemplation section 3, sub-section (2) of the Bombay Entertainments Duty Act, 1923. That sub-section provides that where the payment for admission to an entertainment is made by means of a lump sum paid as subscription or contribution to any society, or for a season ticket, or for the right of admission to a series of entertainments, or to any entertainment during a certain period of time, or for any privilege, right, facility or thing combined with right of admission to any entertainment, or involving such right of admission without further payment, or at a reduced charge, the entertainment duty shall be paid on the amount of the lump sum. Under this provision the entertainment duty is levied on the amount of the lump sum paid for admission to the entertainment, any privilege, right or facility or thing combined with that right of admission to the entertainment being ignored. i.e., the entire lump sum is treated as payment for admission to the entertainment. In the present case it is proposed to charge a lump sum at the rate of Rs. 11/5 or Rs. 10/5, as the case may be, to all diners at a hotel or restaurant whether resident or non-resident. These charges would prima facie be for admission to the dinner, entertainment being secondary, for as stated by the

SVV
30.8.50.

Secretary of the Association the main business of the hotel is to serve food to patrons, outsiders and visitors who come for meals and entertainment is provided as is customary in all Western Style establishments. It is therefore clear that the lump sum of Rs. 11/8 or Rs. 10/8 charged to the diners cannot be considered as payment for admission to the entertainment within the meaning of section 3, sub-section (2). Consequently, the proposal made by the Under Secretary, Revenue Department, would not be legally feasible,.

Additional Secretary to Government.

U.R. to R.D., No. 7951, dated the 19th May 1951.

SVV
20.8.56.
4 c.

Office of the R.L.A.

The Collector of Bombay in his letter at pages 1-4 ante states the Royal Western India Turf Club's admission charges to the enclosures of the Race Courses in Poona and Bombay which have been fixed by Government under the licence granted to the Committee of the Club under the Bombay Race Courses Licensing Act, 1912, are Rs. 5/8/- for men and Rs. 3/8/- for ladiesx for the 1st enclosure and the members' enclosure. Similarly, charges for the whole season are Rs. 90/- and Rs. 45/- for gents and Rs. 56/- and Rs. 28/- for ladies at Bombay and Poona respectively. The Collector has raised the question whether the amounts charged for the admission of ladies to the enclosures cannot be considered to be "payments at a reduced rate" within the meaning of section 2(e) of the Bombay Entertainments Duty Act, 1923, so that full entertainment duty can be charged in respect of such tickets under section 3A of k that Act. The Secretary, Finance Department, considers that the ladies' tickets will be "complimentary tickets" within the meaning of the Act. The R. L. A. is requested to advise.

2. Section 3A of the Bombay Entertainment Duty Act, 1923, as inserted by Bombay Act 38 of 1950, provides for the levy, with effect from 1st April 1951, on every complimentary ticket issued by the proprietor of entertainment duty at the rate prescribed under section 3, as if full payment had been made for admission to the entertainment according to the class of seat or accommodation which the holder of such ticket is entitled to occupy or use. Under section 2(e) of the Act "complimentary ticket"

SVV
30.5.56.
4 e.

means a ticket or pass for admission to an entertainment free of any payment or at a reduced rate of payment for such admission. Section 3(1) provides for a levy of duty at 37½% of the charges for admission to race courses. The contention of the Collector of Bombay seems to be that as different charges are recovered in respect of admission to the enclosures from gents and ladies the tickets issued to the latter at a reduced rate will have to be deemed to be complimentary tickets within the meaning of the definition in section 2(e). This view does not appear to be correct. The idea behind "complimentary tickets is a desire on the part of the proprietors to oblige some persons by issuing tickets free of any payment or at a rate less than what is usually charged to others. If for instance the Club issues to some ladies tickets at Rs. 2/8/- whereas they generally charge Rs. 5/8/- as fixed under the licence the former will have to be deemed to be complimentary tickets within the meaning of the Act. The view taken by the Collector of Bombay that the tickets issued to the ladies at rates less than the rates charged to the gents should be considered as complimentary tickets even t ough the respective rates are fixed under the licence does not therefore appear to be correct. The Collectors argument would be correct only if section 3 of the Act prohibited charging of different admission fees for ladies from those charged for gents. It is permissible under section 3 for management to have different admission charges for gents, ladies, children, students, etc.

Id:/-
13/6/
Remembrancer of Legal Affairs.

U.R. to R.D., No. 9877, dated the 12th June 1951.

SVV
30.5.56.
4 c.

Office of the R.L.A.

When the entertainment duty is already levied in the present case and has formed part of the consolidated fund of the State, the question of granting exemption under Section 6(3) of the Bombay Entertainments Duty Act, 1933 would not now arise. The only course open to Government would be to make a grant equal to the entertainment duty under Article 282 of the Constitution if Government desires to help the Mayor's Relief Fund.

Id./-
22/5/
Remembrancer of Legal Affairs.

U.R. to H.D., No. 6152, dated the 29th May 1951.

SVV
30.5.56.
4 c.

OFFICE OF THE R.I.A.

Paragraph 5(1) of the Baroda State (Application of Law) Order, 1949, provides that all enactments specified in Parts I and II of Schedule one and all notifications, orders, schemes, rules and by-laws issued, made or prescribed under such enactments and in force in the Province of Bombay immediately before the coming into force of this Order shall extend to and be inforce in the Baroda State subject to any amendments to which the said enactments are for the time being generally subject in the Province of Bombay. Paragraph 5 provides for the repeal of enactments in force in the Baroda State. Paragraph 11(1) provides that any taxes, duties, cesses or fees which immediately before the coming into force of this Order were being levied under any enactments in force in the Baroda State continued in force under paragraph 3 or repealed by paragraph 5 shall continue to be levied under the enactments extended or continued in force under paragraph 3 until provision to the contrary is made by a competent authority. The 'A' and 'B' Class Municipalities Acts of the Baroda State were repealed by paragraph 5 and the Bombay District Municipal Act and the Bombay Municipal Boroughs Act were applied. The 'A' and 'B' Class Municipalities Acts of the Baroda State provided for the levy of entertainment duty. The Bombay District Municipal Act, 1901 and the Bombay Municipal Boroughs Act, 1925, provides for power of the municipalities to levy any other tax which the Provincial Legislature has power to levy and under entry 66 read with entry 33 in the State List the Provincial Legislature has power to levy the entertainment tax,. Consequently by virtue of paragraph 11(1) of the Baroda State (Application of Laws) Order, 1949, the entertainment duty which was levied by the 'A' and 'B' Class Municipalities

SVV
30.5.56.

of the Baroda State could be levied by those Municipalities under the Bombay District Municipal Act and the Bombay Municipal Boroughs Act, which were extended and continued in force under paragraph 3, until provision to the contrary is made by a competent authority. These Municipalities could levy the entertainment ~~duty~~ duty and it would not be competent for Government to ask the Municipalities which have recovered the entertainment duty to make it over to Government. It is true that the Bombay Entertainments Duty Act was applied to the area by virtue of paragraph 3 of the Baroda State (Application of Laws) Order, 1949, with the result that both Government as well as the Municipalities could levy the entertainment tax. It is not known whether after 1st January 1950 the Municipalities have been still levying the entertainment duty by virtue of paragraph 11(1) of the Baroda State (Application of Laws) Order, 1949. If they are still levying, it would be for consideration whether the Municipalities may be permitted to levy the entertainment tax, while Government would be also levying the entertainment & duty under the BombayEntertainments Duty Act.

Sd./-
13/7/
Remembrancer of Legal Affairs.

U.R. to R.D., No. 11149, dated the 14th July 1951.

SVV
SC.5.56.
4 c.

Legal Department.

R.I. No. 1480Y

dated ~~xx~~ 12-7-1951.

Submitted with reference to Secretary, E.D.'s note at page 33. In his opinion No. 9877, dated the 12th June 1951, the R. I. A. has observed that under section 3 of the Bombay Entertainments Duty Act, 192 , it is permissible for the management to have different admission charges for gents, ladies, children, students etc. In connection with this observation the Secretary, R. D. states;-

"If I understand the matter correctly the R. I. A.'s argument is somewhat as follows ;-

(1) Section 3 of the Act permits the management to charge different rates to different classes (of persons) although they may sit in the same class (of accommodation);

(2) where "the complimentary" element in a ticket is referable to such a class of persons, as distinct from an individual, the ticket cannot strictly speaking, be regarded as a complimentary ticket for the purpose of assessment of entertainment" duty."

The R. I. A. is requested to advise.

SEV
30.6.56.
4 c.

Office of the R.L.A.

The view expressed by the Secretary, R. D. in his note dated the 10th July 1951 is correct. A ticket will become complimentary only if particular individuals, who otherwise would pay at the rate for admission fixed by the proprietors for the class of persons under which these individuals fall, are admitted at a reduced rate. For example, if ladies say are admitted at the rate of Rs. 3 admitting some ladies at the rate of Re. 1 would ~~mx~~ amount to ~~him~~ issuing complimentary tickets to them.

Sd. 13/7/
Remembrancer of Legal Affairs.

U.R. to R.D., No. 11194; dated the 14th July 1951.

SVV
30.5.56.
4 c.

Office of the R.L.A.

Prince of Wales Museum

Bombay Entertainments Duty Act, 1923, - section 2(a).

The Bombay Entertainments Duty Act, 1923 is a taxing measure and will have to be construed strictly. The expression 'Entertainment' as defined in section 2(a) of the Act includes any exhibition, performance, amusement, game or sport to which persons are admitted on payment. The definition no doubt is inclusive, but a museum as the Prince of Wales Museum cannot be held to be a place of entertainment. Merely because a museum in its ordinary meaning means an institution which affords visual enjoyment and perhaps amusement, it would be wrong to hold that it is a place of entertainment within the meaning of the Bombay Entertainments Duty Act. The opinions of R. L. A. No. 7755 dated 21st October, 1938 and No. 8781 dated 4th August, 1949 are distinguishable and have no application to the facts of this case. As observed in Attorney General v. Southport Coperation (1934) 1 K. B. 836, an entertainment to come within the meaning of the Finance (New Duties) Act, 1916 must be some exhibition, performance, amusement, game or sport for the purpose of entertaining those who pay to see or to hear it. An institution like the Prince of Wales Museum cannot be held to be institution for such purpose.

Sd/-
14/7/
Remembrancer of Legal Affairs.

U.R. to R.D., No. 11299, dated the 17th July, 1951.

SVV
30.5.55.
4 c.

R.I. NO. 15018.
d. 19-7-51.

Submitted.

2. The Institution called 'Kalakshetra' at Surat, it appears, had arranged two musical performances on the 16th and 17th July 1949, admission to which was restricted to the members thereof numbering about 300. The institution collects biennial subscriptions from its members and the funds so collected are entirely used for managing the musical programmes which take place twice or thrice a year. No separate fees for admission are charged. The question for consideration is whether the Kalakshetra is liable to pay entertainment duty under section 3 of the Bombay Entertainments Duty Act, 1923. The F. D. is of the view that the institution is liable to the entertainment duty on the full amount of the subscription. The R. L. A. is requested to advise.

Seen and returned.

The view taken by F. D. is correct (see section 3(2) of the Bombay Entertainments Duty Act, 1923.)

Remembrancer of Legal Affairs.

L.R. to R.D., No. 13472; dated the 22nd August, 1951.

Please also see R.L.A.'s ~~memo~~ No. 18640. dated the 21-11-51.

SVV
30.5.56.
4. c.

The view taken by U.S., R.D. in para 2 of his note at page 87 ante is correct.

2. It is true that by virtue of para 3 of the Baroda State (Application of Laws) Order, 1949, the Bombay Entertainments Duty Act, 1923, was brought into force in the Baroda State with effect from 30th July 1949, But section 1(2) of the Bombay Entertainments Duty Act provides that it extends to the whole of the Bombay State and under sub-section (3) it comes into operation in certain parts of the Bombay State immediately and the State Government may by notification in the Official Gazette direct that it shall come into operation in any other local area on such date as may be specified in such notification, It is, therefore, apparent that if the Act is to be brought into force in any other local area, a notification in the Official Gazette that the Act shall come into operation in such area on such date as may be specified in the notification would be necessary. Although it could be contended that by virtue of para 3 of the Baroda State (Application of Laws) Order, 1949, the Bombay Entertainments Duty Act automatically came into operation on the 30th July 1949 in the whole of the merged Baroda State area, it appears from the marginal note to that paragraph that only the application of the Acts was intended and in respect of such of the Acts as by such application would come into operation no further notification would be necessary, but in respecpect of such of the Acts as could not come into operation, though applied, without any further notification, it appears that such

notification would be necessary before the Act would be deemed to have come into operation. In the circumstances, it must appear that the Bombay Entertainments Duty Act could not be brought into operation without notification as provided in section 1(3) even though it was applied to the whole area. In fact, Government, did issue a notification dated 16th December 1949, bringing the Bombay Entertainments Duty Act into operation in the specified places of the Ex-Baroda State territory with effect from 1st January 1950. In the circumstances, the Bombay rates under the Bombay Entertainments Duty Act became leviable with effect from 1-1-1950 in the places specified in the notification of 16-12-1949.

Sd./-
23/8/
Remembrancer of Legal Affairs.

U.O. to R.D., No. 13518; dated the 23rd August, 1951.

SVV
30.5.56.
4 c.

LEGAL DEPARTMENT.

A license granted under the Bombay Police Act, 1951 and the Cinematograph Act, 1918 cannot be suspended or cancelled for the breach of any of the provisions of other Acts (see R. L. A's opinion No. G-565, dated 14-1-51 a copy of which is appended.).

Sd./-
Additional Secretary to Government.

U.R. to R.D., No. 18533; dated the 20th November 1951.

SVV
30.5.56.
4 c.

Office of the R.I.A.

The Collector of Kolhapur in his letter at p. 1 ante states:-

"Certain local musical clubs arrange musical or other entertaining performances to which members of the Institution alone are admitted without charging any extra fees besides the usual monthly subscriptions. In certain cases however they charge a nominal extra fee of annas -/4/- or -/8/- per month if the performance is expensive. It has also been observed that though non-members of the club are not admitted to such performances even on payments the members of the club are allowed to bring with them one or two guests each on payment of admission charges of about Rs. 2/- or so per guest. As such performances are not open to public in general even on payment, it is doubtful whether entertainment duty can be recovered on payment of admissionxxxxxx charges by guests or on the extra fees required to be paid by the members themselves one expensive performances."

2. The view taken by the Collector is not correct. Section 2(a) provides that "entertainment" includes any exhibition, performance, amusement, game or sport to which persons are admitted ~~for~~ for payment. It is significant to note that the word used is ~~x~~ "persons" and not "public." Sub-section (1) of section 3 prescribes certain scales of entertainment duty to be paid on all payments for admission to any entertainment. Section 3(2) runs as follows:-

"(2) Where the payment for admission to an entertainment is made by means of a lump sum paid as a subscription or contribution to any society, or for a season ticket or for the right of admission to a series of entertainments or to any entertainment during a certain period of time, or for any prigilege, right, facility or thing combined with the right of admission to any entertainment or involving each right of admission without further payment or at a reduced charge, the entertainments duty shall be paid on the amount of the lump sum;

But where the State Government is of opinion that the payment of a lump sum or any payment for a ticket represents payments for other privileges, right or purposes besides the admission to an entertainment, or covers admission to an entertainment, xx during any period for which the duty has not been in operation, the duty shall be charged on such an amount as appears to the State Government represent the right of admission to entertainments in respect of which the entertainments duty is payable."

It is clear, therefore, that in order to levy entertainment duty it is not necessary that the admission to an entertainment should be open to the

public generally as thought by the Collector.
In the case of musical clubs of the type mentioned by the Collector, in view of the provisions of section 3 the entertainments duty will have to be levied not only on the subscription made to the club but also on any extra charge made to the members for right to attend expensive performances and also on fees charged to guests. It does not make any difference, so far as liability to entertainments duty is concerned, whether the entertainments is limited to particular persons or to the public generally.
In this connection attention is invited to Advocate-General's opinion No, 45 dated 16-8-1939, R.L.A.'s opinion No. 6740 dated 17-5-1950 and Additional Secretary's opinion No. 13472 dated 22-8-1951. Also, whether a licence for the performance of the entertainment is necessary or not has nothing to do with the question of the liability to the payment of duty under the Bombay Entertainments Duty Act, 1923.

Sd./-
21/11/
Remembrancer of Legal Affairs.

U.R. to H.D., No. 18640; dated the 21st November, 51.

SVV
30.5.56.
4 c.